THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

VOL. XV, No. 17 MAY, 1943 PAGES 389-412

COMPLETE NUMBER 300

Published by

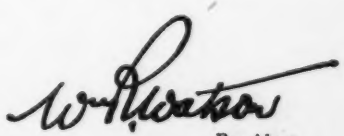
THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

The Court of Chancery of Delaware has ruled that the exercise of proxies received prior to the war with Germany, from stockholders of a Delaware company residing in "occupied France," was not inconsistent with the Trading With the Enemy Act. (See page 394.)

The New Jersey Supreme Court has held that a New Jersey corporation, not active in that state, all of whose property had been assessed in another state, was not subject to property taxes on its intangibles in New Jersey. (See page 403.)

In North Carolina, a Federal District Court has dismissed a stockholder's derivative suit, involving a foreign corporation's internal affairs, where it was shown that a similar suit was pending in a court of the corporation's home state. (See page 396.)

The Texas statute requiring the registration of an assumed name has been held not applicable to a corporation. (See page 397.)



President.

THE CORPORATION JOURNAL

VOL. XV, No. 17 MAY, 1943 PAGES 389-412

The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for May

What Constitutes Doing Business

Hawaii

Sec. 6770 of Chapter 222 of the Revised Laws of Hawaii, 1935, requires that "every corporation or incorporated company formed or organized under the laws of any state of the United States or of any foreign state or country, which shall undertake to do or carry on any business in the Territory or to take, hold, sell, demise, or convey real estate or any other property therein" is to file papers, appoint a local agent, post a bond and take other steps necessary to obtain authority to do business in Hawaii. The expression "to do or carry on any business" is not defined by statute.

Sec. 6772 contains a proviso to the effect that "no license shall be necessary for any corporation engaged solely in the business of foreign or interstate commerce, or while solely employed by the government of the United States."

In one of the few Hawaii decisions related to the subject of "doing business," the Supreme Court of Hawaii held, in 1921, that the sale of a set of books by sample through the taking of an order in Honolulu, followed by the shipment of the books direct to the customer from Los Angeles, California, constituted interstate commerce and that a California corporation so engaged was not required to procure a license as a prerequisite to carrying on such interstate commerce.[1] In a much earlier case, decided in 1883, a foreign corporation operating a plantation in Hawaii, which had failed to comply with the laws of Hawaii as to registration was ruled not entitled to maintain a suit against contract laborers there for refusal of duty.[2]

In view of the similarity of the Hawaii statute regarding qualification, mentioned above, and those of the various states of the Union and the fact that Sec. 495 of the Hawaiian Organic Act[3] provides that: "The Constitution, and, except as otherwise provided, all the laws of the United States, including laws carrying general appropriations, which are not locally inapplicable, shall have the same force and effect within the Territory of Hawaii as elsewhere in the United States," it may, perhaps, be presumed that, generally speaking, the rules applied in the various states on the subject of "doing business" would be regarded as persuasive by the Hawaii courts in deciding such questions, if presented to them. In the 1921 decision previously mentioned, a number of state court decisions were cited as authority by the Supreme Court of Hawaii.[4]

---

[1] *Cannell & Chaffin, Inc. v. C. W. C. Deering,* 26 Hawaiian Reports 74.

[2] *Heeia Sugar Plantation Company v. Kahana-Hoku et al.,* 6 Hawaiian Reports 385.

[3] 48 U. S. C. A. sec. 495.

[4] Appeals lie from the Supreme Court of Hawaii to the United States Circuit Court of Appeals, Ninth Circuit.

Domestic Corporations

Delaware.

Exercise of proxies received prior to war with Germany from stockholders of Delaware company residing in "occupied France," ruled not inconsistent with Trading With the Enemy Act. Petitioner, a stockholder in respondent company, questioned the validity of the election of the individual respondents as directors of respondent company at an election held March 3, 1942. The Vice Chancellor opened his opinion with the observation that the validity of the election depended upon whether the attempted voting of certain proxies was lawful, and that these proxies were signed by French shareholders who were residents of "occupied France," having been mailed to the respondent Waltman, a native born citizen and resident of the United States, prior to the outbreak of the war between the United States and Germany on December 11, 1941. "The proxies were not dated and did not designate the persons who should exercise the authority to vote. Waltman filled in the spaces for the date and names of proxy holders, and voted upon the proxies for the election of the individual respondents as directors." Petitioner contended the votes should not have been counted, arguing that at the time of the meeting the French shareholders were "enemies" within the meaning of the Trading With the Enemy Act, and that the completion of the proxies by dating them and filling in the names of the proxy holders was illegal as trade with the enemy and that the exercise of the voting rights which the proxies purported to confer was likewise in violation of the Act. The court, however, after an examination of the circumstances and decisions involving the Act mentioned, came to the conclusion that the authority to vote upon the proxies was not terminated or suspended by the advent of the war, expressing the view that "the exercise of pre-war authorizations to manage property or business enterprises here is not, of itself, inconsistent with the purpose of the Trading With the Enemy Act or with any other part of the 'protective program' which has come to my attention." *Aldridge v. Franco-Wyoming Securities Corporation et al.*, Court of Chancery, New Castle County, March 26, 1943. Commerce Clearing House Court Decisions Requisition No. 299858. Aaron Finger of Richards, Layton & Finger of Wilmington, and Richard J. Cronan and Samuel Duker of Kaufman & Cronan of New York City, for petitioner. Clarence A. Southerland and E. Ennalls Berl of Southerland, Berl and Potter, for respondents.

Illinois.

Where one who had been a shareholder for at least six months sought to inspect corporate records, court ruled burden was on defendants to prove his purpose was improper. Plaintiff brought this mandamus suit to compel defendants to permit him, as a holder of participating certificates in The Broadview, Inc., to examine its

books and records and its list of stockholders. The trial court had taken the position that the burden was on the defendants to prove that plaintiff's purpose was improper and that they had failed in this respect, and had awarded the writ to plaintiff. This judgment was affirmed by the Illinois Appellate Court, First District. That court, referring to Section 45 of the Corporations Act, observed: "The statute in question creates two classes of persons who have the right to examine the records of the corporation. The first is a person who shall have been a shareholder for at least 6 months immediately preceding his demand or the holder of at least 5 per cent of the outstanding shares, and demanding to examine the books and records for 'any proper purpose.' Plaintiff is in this class. The second class of shareholders includes anyone who, irrespective of the period of time he shall have been a shareholder, and irrespective of the number of shares held, may compel by mandamus the examination of the books and list of shareholders, and conditioned 'upon proof by a shareholder of proper purpose' in making such demand. A reasonable construction of this statute would seem to be that any shareholder, regardless of the number of shares held or the period of time, must make proof of a proper purpose in asking for an examination of the books and records of the corporation, but that a shareholder qualified as to the period of time he has been a shareholder or where he owns 5 per cent or more of the shares may make such demand without being called upon first to make proof that his demand is for a proper purpose." *Morris v. The Broadview, Inc., et al.*, Illinois Appellate Court, First District, January 25, 1943; rehearing denied February 9, 1943. Commerce Clearing House Court Decisions, Requisition No. 297017.

New York.

Court indicates that basis of allowances under Sec. 61-a, General Corporation Law is successful prosecution of suit resulting in a substantial benefit to corporation. In a recent derivative suit, the Supreme Court, Appellate Division, Second Department, made the following observations with regard to Sec. 61-a, General Corporation Law: "Section 61-a of the General Corporation Law provides for allowances to be made by the court for expenses and attorneys' fees. Reasonable construction of this section suggests as a basis for these allowances a successful prosecution resulting in a substantial benefit to the corporation. In the opinion of the court, the proof in this record does not establish such benefit, and the motion was therefore properly denied." *Drivas v. Lekas et al.*, 39 N. Y. S. 2d 15.

Court denies application, in stockholders' derivative suit which was settled prior to trial, for payment by corporation of defendant directors' counsel fees. "This is an application for an allowance of counsel and accountants' fees and expenses, made by all the plaintiffs and by the intervenor-plaintiff in this derivative stockholders' action. There is also an application for counsel fees incurred by the individual defendants, who are directors and officers of the corporation

involved, in the defense of the action. The case was settled on the eve of trial with the approval of the court, after a hearing attended by the attorneys for all the parties, and after another hearing held before the court on due notice to all the stockholders of the corporation at which an opportunity was afforded for any stockholder to be heard. The settlement involved a financial benefit to the corporation consisting of a present amount of $653,744.72 plus an indeterminable amount of saving for the future. The law has always been clear that when plaintiffs, in a derivative suit such as this, create a fund for the benefit of a corporation they are entitled to their expenses and reasonable attorneys' and accountants' fees payable out of such fund. Section 61-a of the General Corporation Law, in this respect, is declaratory of the holdings of the earlier cases." After making allocations to counsel and accountants for the plaintiffs for counsel fees, etc., the New York Supreme Court, Special Term, New York County, remarked: "So far as I have been able to discover, this is the first time an application has been made by defendant directors and officers, after the termination of a derivative action by settlement, for an allowance of counsel fees. The question as to whether the attorneys and the counsel for the individual defendants are entitled to be paid by the corporation for the legal services rendered by them to the directors and officers and for the expenses incurred during the litigation depends upon the proper interpretation of Section 61-a of the General Corporation Law, adopted in 1941." The court pointed out that Sec. 61-a contains provision, with respect to a settlement of such a suit, that the expenses "shall be assessed upon the corporation in such amount as such court shall determine and find to be reasonable in the circumstances." Referring to the application of the defendants for counsel fees, the court concluded: "I do not think that the circumstances of this settlement show any benefit to the corporation itself which, in the exercise of judicial discretion, would warrant the payment by the corporation of the attorney's fees of the individual defendants." *Neuberger et al. v. Barrett et al.*, 39 N. Y. S. 2d 575.

Foreign Corporations

North Carolina.

Stockholder's derivative suit, involving foreign corporation's internal affairs, dismissed without prejudice where similar suit was pending in court of corporation's home state. Plaintiff, a citizen and resident of New York and a stockholder of defendant New Jersey company, instituted this derivative suit in a North Carolina Federal court to enjoin the further distribution of profits, to adjudge a by-law to be illegal and to require the individual defendants to account for and restore to the corporation the amount of alleged damage they had caused. A prior suit, on the same grounds and seeking the same relief, had been pending in a New Jersey court for nearly a year before this action was begun in North Carolina. The United States

District Court, N. D., North Carolina, dismissed the suit without prejudice, making the following observations: "The case in most of its material features is identical with *Rogers v. Guaranty Trust Co.*, 288 U. S. 123, 53 S. Ct. 295, 77 L. Ed. 652, 89 A. L. R. 720." "The diligence of plaintiff's counsel fails to discover and present to this court a case where a court has exercised jurisdiction in a stockholder's derivative suit involving the internal affairs of a foreign corporation where a similar suit for the same relief was then pending in the court of the corporation's domicile. In the absence of a controlling case under such circumstances, I am convinced that this court ought not to exercise jurisdiction. This court has no power to stay or to interfere with the prosecution or final decree of that court. If the two courts should reach the same result, double expense and valuable time would be needlessly expended and consumed. Certainly the final decree of the court of the corporation's domicile would be supreme and ultimately this court would be compelled to yield to the law of that court. It is difficult to see any advantage to be gained by exercising jurisdiction here. This plaintiff can join in the litigation there and obtain whatever relief the law of New Jersey may grant her." *Healey v. R. J. Reynolds Tobacco Co. et al.*, 48 F. Supp. 207. Tillett & Campbell of Charlotte, N. C., James W. Stites of Louisville, Ky., and Warren & McGroddy of New York City, for plaintiff. Womble, Carlyle, Martin & Sandridge of Winston-Salem, N. C. and James D. Carpenter, Jr., of Jersey City, N. J., for defendant R. J. Reynolds Tobacco Co. Josiah Stryker of Newark, N. J., for individual defendants. Womble, Carlyle, Martin & Sandridge of Winston-Salem, N. C., for defendant Wachovia Bank & Trust Co., Trustee under the respective wills of Bowman Gray, C. A. Kent, D. Rich, and Robert D. Shore. Ratcliff, Vaughn, Hudson & Ferrell of Winston-Salem, N. C., for defendant Wachovia Bank & Trust Co., Trustee under the respective wills of Carl W. Harris and Joseph L. Graham.

Texas.

Statute requiring registration of assumed name held not applicable to a corporation. Appellant, the manager of Linen Service Corporation of Texas, a Delaware company licensed to do business in Texas, doing business under the trade name of Fort Worth Linen Service Company, had been convicted of transacting business in Taylor County, Texas, under an assumed name other than his real name, without having filed a certificate in the office of the County Clerk of that county, as required by Article 1067, P. C. That article provides, in part, that "no person or persons shall carry on or conduct or transact business in this State under any assumed name or under any designation, name, style, corporate or otherwise, other than the real name or names of the individual or individuals conducting or transacting such business unless such person or persons shall file in the office of the county clerk of the county or counties in which such

person or persons conduct, or transact or intend to conduct or transact such business, a certificate," etc. The Court of Criminal Appeals of Texas noted that the statute failed to include corporations and that it was to be strictly construed. It also observed that a succeeding article, Art. 1069, P. C., provided that the preceding articles were not applicable to any Texas corporation or to a foreign corporation lawfully doing business in the state. "This," said the court, "convinces us that the Legislature did not intend to apply the statute to corporations but merely to natural persons." The judgment was, therefore, reversed. *Stanley v. State,* 165 S. W. 2d 456. Bryan, Stone, Wade & Agerton and G. W. Parker, Jr., of Fort Worth, for appellant. Spurgeon E. Bell, State's Atty., of Austin, for the State.

Taxation

Federal.

Corporate existence not disregarded for Federal income tax purposes, where company was created to act for sole stockholder. The respondent corporation was organized in 1928, and at all times Uly O. Thompson had been its president and sole stockholder, with the exception of qualifying shares. The corporation was organized at the suggestion of Thompson's creditors as a means of protecting investments and saving his equity in certain parcels of real estate located in Florida, title to which Thompson transferred to the company, which had no assets other than the real estate. The question raised concerned whether the corporate existence was to be disregarded in taxing, for Federal income tax purposes, the gains from the sales of the property of the corporation. The Board of Tax Appeals regarded the respondent as a corporation without substance and ruled that Thompson was entitled to report the proceeds from the sales as his individual income. The Commissioner of Internal Revenue questioned the correctness of the Board's decision. The United States Circuit Court of Appeals, Fifth Circuit, reversed the decision of the board and held that the gains from the sales of the property of this corporation were taxable to the company, saying: "In the case at bar Thompson, for reasons satisfactory to himself and to his creditors, elected to employ a corporation in the handling of certain parcels of his real estate. Having chosen the corporate form to conduct these affairs, both Thompson and his corporation must accept the tax disadvantages of the plan; and they may not now, in order to escape corporate taxes, be heard to disavow the corporate existence and allege that the respondent was merely a 'dummy' corporation." *Commissioner of Internal Revenue v. Moline Properties, Inc.,** 131 F. 2d 388. *(Petition filed in the Supreme Court of the United States, January 18, 1943; Docket No. 660. Certiorari granted, March 8, 1943.)*

* The full text of this opinion is printed in the **CCH Standard Federal Tax Service—1942—¶ 9728.**

Stock dividends held not taxable as income where distributions effected no change in stockholders' interests. On April 5, 1943, the Supreme Court of the United States, in an opinion relating to two cases, ruled that stock dividends were not taxable as income, under circumstances where the distributions effected no change in the interests of the stockholder in the corporation. In one case, *Helvering, Commissioner of Internal Revenue, v. Sprouse,** Docket No. 22, the stockholder, who owned voting common stock, received a ten per cent stock dividend in shares of non-voting common stock, the shares outstanding being limited to these two issues and neither the voting rights of the voting common, nor its right to share in dividends and in liquidation, was altered by the distribution. In the other case, *Strassburger v. Commissioner of Internal Revenue,** Docket No. 66, the stockholder owned 200 shares of common—the entire stock of his corporation—and received 50 shares of a 7% cumulative non-voting preferred stock created by a charter amendment. The court indicated the cases were ruled by *Helvering v. Griffiths*, No. 467, Oct. Term 1942, (The Corporation Journal, April 1943, page 379). In the course of its opinion, the court referred to the Koshland case, decided in 1936, saying: "We think *Koshland v. Helvering*, 298 U. S. 441, distinguishable. That was a case where there were both preferred and common stockholders and where a dividend in common was paid on the preferred. We held, in the circumstances there disclosed, that the dividend was income but we did not hold that any change whatsoever in the character of the shares issued as dividends resulted in the receipt of income. On the contrary the decision was that, to render the dividend taxable as income, there must be a change brought about by the issue of shares as a dividend whereby the proportional interest of the stockholder after the distribution was essentially different from his former interest." Commerce Clearing House Court Decisions Requisition No. 300212; 63 S. Ct. 791.

* The full text of this opinion is printed in the **CCH Standard Federal Tax Service—1943—¶ 9363.**

Illinois.

Sales of goods, purchased in Illinois, ruled taxable, after July 1, 1941, even though title and possession passed at seller's plant in another state. Plaintiff oil company sought a reversal of a decree of the Circuit Court of Sangamon County that plaintiff was taxable, under the Retailers' Occupation Tax Act, as to sales effected as follows: All sales were on orders or contracts placed with, and accepted by, plaintiff at some one of its offices located in Illinois. All the products sold were outside of the state when the sale was made and sales were f. o. b. an out-of-state refinery. After an order was received and accepted, plaintiff sent it to one of its out-of-state refineries with directions as to loading and billing to the customer. The Illinois Supreme Court held that plaintiff was exempt from the

" . . . and his
to make and file
"Must drive
"Oh, no—u
thing I did
to advise the
system of
companies
That, you
fications
it all relati

tax under such circumstances as the law stood up to July 1, 1941 but subject to the tax subsequent to that time. Section 2 of the Act, prior to a 1941 amendment contained language as follows: "A tax is imposed upon persons engaged in the business of selling tangible personal property at retail in this State at the rate of three per cent (3%) of the gross receipts from such sales in this State of tangible personal property made in the course of such business prior to July 1, 1941," etc. The 1941 amendment fixed a lower rate and deleted the words "in this State" where they appeared the second time in the above quoted sentence. The court regarded this deletion as removing a limitation as to the location where the sales must occur "and to leave the tax to be measured upon the gross receipts of all sales regardless of where the sales were made, provided they were made in the business of an occupation located within this State." "The business which plaintiff conducted in this State included the taking of orders, the making of contracts, agreeing upon terms, receiving the payment and all other elements of the sale except delivery and transfer of title. This is sufficient to constitute it an occupation or business engaged in in this State. The result of the conclusions reached exempts plaintiff from a tax under the 1939 amendment but subjects it to a tax under the 1941 amendment." *Standard Oil Company v. Department of Finance et al.,** Illinois Supreme Court, March 18, 1943. Commerce Clearing House Court Decisions Requisition No. 298902. Buell F. Jones, D. Logan Giffin and C. Terry Lindner, for appellant. George F. Barrett, Attorney General (Harry L. Arnold, of counsel), for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service, Illinois, page 6633.**

Kansas.

Sales tax held applicable where corporation took mail orders at stores operated in Kansas which were transmitted to Missouri and goods then shipped to Kansas stores for delivery or shipped direct to customer, subject to his approval, such sales being regarded as Kansas sales subject to tax. Plaintiff company maintained stores in Kansas where, in addition to its customary sales at retail, not in dispute, it effected sales at a mail-order desk, where orders were prepared for items not in stock and sent to Missouri, where the orders were filled by either shipping the goods to the original store for delivery to the customer or by shipping direct to the customer, subject to the customer's approval in each instance. The company contended such sales were Missouri sales, being consummated in that state because accepted there and delivery was made to the carrier there. This view was upheld by the trial court. Upon appeal, the Kansas Supreme Court reversed the lower court, entering judgment against the company. It observed that retail sales within the state were taxable and emphasized that the relationship between the company and the customer was not at an end when delivery was made

to the carrier in Missouri, as the transaction might still never ripen into a sale, since the merchandise might never reach the customer and it was subject to his approval in Kansas, in any event. The court concluded therefore, that the sales were Kansas sales which were assessable. *Montgomery Ward & Co., Inc. v. State Commission of Revenue and Taxation,** 133 P. 2d 1008. Commerce Clearing House Court Decisions Requisition No. 296822. James D. Dye of Ottawa, Mark L. Bennett of Topeka, and Mason Mahin, of Smith Center, J. H. Jenson of Oakley, (on the brief), for appellant. Larry H. Oliphant of Chicago, Ill., (Robert L. Webb of Topeka and John A. Barr and Harvey L. Hensel, of Chicago, Ill., on the brief), for the appellee.

* The full text of this opinion is printed in **The Corporation Tax Service,** Kansas, page 549.

Louisiana.

Failure of foreign corporation to file annual statements under Act 107 of 1922 held not to affect enforceability of its contracts. Plaintiff, who had assigned a lease he held to defendant Delaware corporation in 1939, instituted this suit to have the assignment declared void on the ground that defendant had failed to file annual statments for the years 1930 to 1940, inclusive, as required of foreign corporations under Act 107 of 1922. The Supreme Court of Louisiana affirmed a judgment of the dismissal of the suit in the lower court, observing that the act was a revenue act, pure and simple. "The fact that the corporation has failed to pay the tax or file its annual statements required by the Act could be no concern of the plaintiff. Whether the corporation is unlawfully exercising corporate powers are matters which concern the State or the State's business. If the State acquiesces in the usurpation of corporate powers, individuals cannot complain. The failure of a foreign corporation to comply with State requirements before doing business in this State would not affect the nullity or unenforceability of contracts entered into in the course of the corporation's business. If the Legislature had intended that contracts entered into in the course of such business should be null or unenforceable it would have manifested such intention." *Rowley v. Bird Island Trapping Co., Inc.,** 11 So. 2d 553. R. A. Dowling of New Orleans, for appellant. Leander H. Perez of New Orleans, for appellee.

* Pertinent portions of this opinion are printed in **The Corporation Tax Service,** Louisiana, page 521.

New Jersey.

New Jersey corporation, not active in the state, all of whose property had been assessed in another state, held not subject to taxation on its intangibles at its chief office in the state. Prosecutor was a New Jersey corporation having its chief office in the state in defendant township. Its charter, however, prohibited activities in the state.

The company's only property in New Jersey was transfer and stock books. Its real and personal property was situated in North Carolina and taxed there, including intangibles used in the course of business there. In November, 1940, after a complaint had been made by defendant collector to the County Board of the county in which defendant township was located, that Board fixed an assessment of $21,953,125, representing the value of intangible personal property of prosecutor omitted by the local assessor of defendant township on the October 1, 1938 assessing date. Prosecutor had no notice of the hearing at which this amount was fixed. The New Jersey Supreme Court, after an examination of the pertinent statutes concluded that the County Board had not acted in accordance with the law in making the assessment on its own motion. It also ruled that the property in question was exempt from taxation under New Jersey statutes, citing particularly N. J. S. A. 54:4-3.2, providing: "The personal property owned by citizens or corporations of this state, situate and being out of the state, upon which taxes shall have been actually assessed and paid within twelve months next before October first, being the day prescribed by law for commencing the assessment shall be exempt from taxation under this chapter." The court said: "The proofs show the assessment and payment of taxes in accordance with the act." The assessment was, therefore, set aside. *Duke Power Company v. State Board of Tax Appeals et al.,** 30 A. 2d 416. Commerce Clearing House Court Decisions Requisition No. 297576. Pitney, Hardin & Ward and Shelton Pitney of Newark, for the prosecutor. W. Eddy Heath of Somerville, Frederick C. Vonhoff, Edward R. McGlynn and Joseph Weintraub of Newark, for the defendants.

*The full text of this opinion is printed in **The Corporation Tax Service**, New Jersey, page 2346.

New York.

Stock transfer tax held applicable to transaction of foreign corporation with office in New York, which appointed a New York trust company as its agent to effect payment of shares of a Connecticut corporation purchased by the foreign corporation from shareholders residing out of New York, where transfers were effected on Connecticut corporation's books in Connecticut. Stockholders of a Connecticut corporation, having no place of business in New York, gave a New Jersey corporation, the claimant, options to purchase their stock. These options were in writing and, so far as they related to the tax in dispute, were mailed by the stockholders residing out of New York from points outside the state to claimant at Watervliet, New York. Claimant mailed written acceptancies to such stockholders, requesting them to mail to a New York City trust company, as its agent for the transaction, their certificates of stock, properly endorsed for transfer, and stated that the trust company would forward to each stockholder a check for the amount of the purchase price of his shares. The arrangement was carried out and the trust

company subsequently forwarded to the Connecticut company in Connecticut, the shares purchased and new certificates were issued in Connecticut by that company and practically all new shares delivered to a representative of claimant in Connecticut, a few being mailed to claimant at Watervliet, New York. The New York trust company affixed New York State stock transfer tax stamps on the shares of the Connecticut company passing through its hands, their cost being covered by claimant, who sought a refund on the ground that the Stock Transfer Tax Law was not applicable to the situation. The Court of Claims of New York dismissed the claim on the merits, observing: "The statute exempts certain transactions occurring outside the State which exemptions are applicable where 'neither the sale, nor the agreement to sell, nor the memorandum of sale, nor the delivery is made in this state and no act necessary to effect the transfer * * * is done in this state.' Considerable was done by the parties within New York State in the instant case. First, the agreement was signed in Watervliet by the purchaser. This by itself might not be sufficient to incur tax liability, as in the event of default, the remedy would have been for breach of the Option Agreement. But more was done than the mere acceptance of an option offer. The purchaser appointed the Guaranty Trust Company of New York City as its agent to attend to the business of carrying out the terms of the option, and the out-of-state owners were directed to deliver their stock certificates to the Trust Company, and it was to pay over the agreed purchase price. The transmittal of certificates thereafter to Connecticut for transfer on the books of the foreign corporation was merely an administrative act which simply confirmed the beneficial transfer that had already taken place in New York, to accomplish which the facilities of the State of New York had been resorted to. As we have seen, it is the business privilege that is taxable, not the property represented by the shares nor the shares themselves, both by the language of the statute and the ruling of our highest Appellate Court. People ex rel. Hatch v. Reardon, 184 N. Y. 431, 77 N. E. 970, 8 L. R. A., N. S., 314, 112 Am. St. Rep. 628, 6 Ann. Cas. 515, affirmed 204 U. S. 152, 27 S. Ct. 188, 51 L. Ed. 415, 9 Ann. Cas. 736. Nor should the claimant complain. Its appointment and use of the Guaranty Trust Company as an agent was purely voluntary and certainly was prompted for its own convenience and protection. Having so acted, we must hold that it thus brought itself within the provisions of Section 270 of the Tax Law and rendered itself liable to the tax therein levied." *Ludlum Steel Co. v. State,** 39 N. Y. S. 2d 146. Neile F. Towner of Albany, for claimant. John J. Bennett, Jr., Atty. General, (Joseph L. Delaney, Asst. Atty. General, of counsel), for the State.

* The full text of this opinion is printed in **The Corporation Tax Service**, New York, page 20,747.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

FEDERAL. Docket No. 22. *Helvering, Commissioner of Internal Revenue v. Sprouse,* 122 F. 2d 973. (The Corporation Journal, April, 1942, page 158.) Federal income tax—stock dividend paid in non-voting common stock of corporation. **Appeal filed, January 21, 1942. Certiorari denied, March 2, 1942. Petition for rehearing denied, March 30, 1942. Order denying certiorari vacated, and petition for writ of certiorari granted, May 11, 1942. Argued, November 10 and 12, 1942. Affirmed, April 5, 1943. (See page 399.)**

FEDERAL. Docket No. 66. *Strassburger v. Commissioner of Internal Revenue,* 124 F. 2d 315. (The Corporation Journal, March, 1942, page 134.) Federal income tax—stock dividend in preferred stock declared by corporation which had only one class of stock outstanding, all owned by one person. **Appeal filed, April 3, 1942. Certiorari granted, May 11, 1942. Argued, November 10 and 12, 1942. Reversed, April 5, 1943. (See page 399.)**

FEDERAL. Docket No. 660. *Moline Properties, Inc. v. Commissioner of Internal Revenue,* 131 F. 2d 388. (The Corporation Journal, May, 1943, page 398.) Federal income tax—taxation of corporation which was created to act as agent of sole stockholder—estoppel to assert that corporate entity should be disregarded. **Petition for certiorari filed, January 18, 1943. Certiorari granted, March 8, 1943. Argument concluded, April 19, 1943.**

MINNESOTA. Docket No. 882. *Northwest Airlines, Inc. v. State of Minnesota,* 7 N. W. 2d 691. (The Corporation Journal, March, 1943, page 351.) State taxation—assessment of Minnesota personal property tax against entire fleet of airplanes operated by Minnesota corporation in interstate commerce. **Petition for certiorari filed, April 2, 1943.**

PENNSYLVANIA. Docket No. 720. *Bayuk Cigars, Inc. v. Commonwealth of Pennsylvania,* 28 A. 2d 134. (The Corporation Journal, April, 1943, page 381.) Pennsylvania Corporate Net Income Tax Act—apportionment of wages paid to employes who performed services outside of the state—gross receipts from interstate sales. **Appeal filed, February 10, 1943. April 19, 1943:** *Per curiam:* The motion to affirm is granted and the judgment is affirmed. (1) *Butler Bros. v. McColgan,* 315 U. S. 501, and cases cited; *Wisconsin v. J. C. Penney,* 311 U. S. 435, 437; *Dep't of Treasury v. Wood Corp'n,* 313 U. S. 62, 66-67; *Wheeling Steel Corp'n v. Fox,* 298 U. S. 193; (2) *Madden v. Kentucky,* 309 U. S. 83, 87-90.

* Data compiled from **CCH U. S. Supreme Court Service,** 1942-1943.

Regulations and Rulings

DISTRICT OF COLUMBIA—The maintenance of an office in the District for the purpose of preparing and submitting bids to the various government departments and for the purpose of soliciting customers other than the government does not of itself constitute business as contemplated by the provisions of the District of Columbia Income Tax Act. Orders obtained from others than the government do not constitute doing business, when such orders must be accepted outside the District and delivery of the goods is made in a manner whereby title passes without the District. Since the corporation is not engaged in the District and receives no income from District sources, it is neither required to obtain a license nor file a return. (Opinion of the Corporation Counsel, District of Columbia CT (Corporation Tax) Service, ¶ 10-226.)

DOMINION OF CANADA—The Department of National Revenue, Income Tax Division, has announced that in 1943 the Returns of Employers relating to remuneration of Employees (Forms T. 4 Summary and T. 4 Supplementary) must be filed on or before the 31st of May.

NEW YORK—No exemption from the New York stock transfer tax can be based on the fact that the stock is transferred to the United States or to one of its instrumentalities. (Ruling, Department of Taxation and Finance, New York CT, ¶ 200-661.)

NEW YORK CITY—Rulings issued recently by the Special Deputy Comptroller in connection with the New York City Gross Receipts Tax are to the effect that (1) trade discounts customary in a trade or business, without regard to the form or terms in which described or stated on invoices, are deductible from gross receipts, while discounts allowed only for prompt payment of an invoice are not deductible, (NY CT, ¶ 220-224); (2) out-of-city business houses which do not maintain offices in New York City but make sales to persons in the city through representatives or agencies in New York City are subject to the Gross Receipts Tax Law commencing with Local Law No. 103 of 1939, (NY CT, ¶ 220-225); (3) Federal and State excise taxes imposed on manufacturers, distributors or dealers are to be included in gross receipts subject to tax, even though separately billed, (NY CT, ¶ 220-227); Vitamins and vitamin products are "medicines" rather than "food or food products," and their sale is subject to tax, (NY CT, ¶ 220-230.)

TEXAS—The franchise tax becomes a lien as of May 1 of the year in which the tax becomes due and remains a lien against all of the property owned by the taxpayer corporation until the tax, including penalties and interest, is finally paid. The lien will follow the property of the corporation and a purchaser of the same would acquire it with notice of and subject to the state's lien for the unpaid franchise taxes, penalties and interest. (Opinion, Attorney General to Secretary of State, Texas CT, ¶ 15-013.)

Some Important Matters for May and June

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Payment due on or before May 15. —Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

DOMINION OF CANADA—Return of Employers due on or before May 31. —Domestic and Foreign Corporations.

Annual Summary due on or before June 1.—Dominion Companies.

FLORIDA—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

IOWA—Report of Transfers of Stock due on or before July 1.—Domestic Corporations.

KENTUCKY—Statement of Existence due on or before July 1.—Foreign Corporations.

Annual Verification Report as to Process Agent due on or before July 1.—Domestic and Foreign Corporations.

LOUISIANA—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MISSOURI—Annual Franchise Tax due on or before May 15.—Domestic and Foreign Corporations.

Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Franchise (Occupation) Tax due on or before July 1.—Domestic Corporations.

NEVADA—Annual List of Officers and Designations and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

NEW JERSEY—Franchise Tax Return and Tax due on or before May 15. —Domestic Corporations.

NEW MEXICO—Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3-IT—Article 9-A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations.

OREGON—Annual Report due during June.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due on or before July 1 and delinquent after July 15.—Domestic and Foreign Corporations.

TENNESSEE—Annual Privilege (Franchise) Tax Return and Payment, Annual Report and Tax and Excise Tax Report and Tax due on or before July 1.—Domestic and Foreign Corporations.

Report of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second Installment of Income Tax due June 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VIRGINIA—Income Tax due June 1.—Domestic and Foreign Corporations.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal place of business or chief works are located in other states.

WYOMING—Annual Statement and License Tax due on or before July 1. —Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

Contracts You Can't Enforce. Some interesting case-histories which show the advisability of a contractor getting his lawyer's advice before undertaking construction work outside his home state, even if for the federal government.

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation—all reflecting the amendments adopted in 1941.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

When a Corporation Leaves Home. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

Amendments to Delaware Corporation Law, 1941. Contains complete text of the amendments adopted at the 1941 session of the legislature, giving for each one a brief explanation of its purpose and effect.

We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

What! *We* Need a Transfer Agent? *Nonsense!* The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

THE CORPORATION TRUST COMPANY
120 BROADWAY, NEW YORK, N. Y.

MAY DAYS

Every Maypole Party you see—every new spring blossom—every beautiful day—is another reason for each of us to redouble his will to help in this war for our way of life. Is your subscription for War Bonds as big as you can make it?